

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Asselman	Team: Squad #04	CCRB Case #: 202204339	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/02/2022 11:25 PM, Thursday, 02/02/2023 10:37 AM	Location of Incident: East Gun Hill Road and Barnes Avenue; 100 Church Street, CCRB offices	18 Mo. SOL 1/2/2024	Precinct: 47		
Date/Time CV Reported Sun, 07/03/2022 11:08 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 07/03/2022 11:08 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Charles Hillery	07731	944653	047 PCT
2. LT Amanda Szot	00000	946306	047 PCT
3. PO Justin Calderon	21964	972438	047 PCT
4. PO Omar Habib	00748	942899	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Omair Butt	01284	952517	047 PCT
2. PO Jeffrey Reisenauer	13405	956195	FTU 10
3. PO Mark Fleming	24493	941763	047 PCT
4. SGT David Verna	02790	953527	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Charles Hillery	Abuse: Police Officer Charles Hillery interfered with § 87(2)(b) use of a recording device.	
B . PO Justin Calderon	Abuse: Police Officer Justin Calderon interfered with § 87(2)(b) use of a recording device.	
C . PO Charles Hillery	Discourtesy: Police Officer Charles Hillery acted discourteously toward § 87(2)(b)	
D . PO Charles Hillery	Discourtesy: Police Officer Charles Hillery spoke discourteously to § 87(2)(b)	
E . PO Justin Calderon	Discourtesy: Police Officer Justin Calderon acted discourteously toward § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
G . PO Omar Habib	Abuse: Police Officer Omar Habib improperly used his body-worn camera.	
H . PO Charles Hillery	Force: Police Officer Charles Hillery used physical force against § 87(2)(b)	
I . PO Charles Hillery	Force: Police Officer Charles Hillery used physical force against § 87(2)(b)	
J . PO Charles Hillery	Abuse: Police Officer Charles Hillery damaged § 87(2)(b) property.	

Officer(s)	Allegation	Investigator Recommendation
K . PO Charles Hillery	Force: Police Officer Charles Hillery used physical force against § 87(2)(b)	
L . PO Charles Hillery	Abuse: Police Officer Charles Hillery threatened to arrest § 87(2)(b)	
M . LT Amanda Szot	Abuse: Lieutenant Amanda Szot threatened § 87(2)(b) with the use of force.	
N . PO Charles Hillery	Untruthful Stmt.: Police Officer Charles Hillery provided a false official statement to the CCRB.	
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint on July 3, 2022, at 11:08pm, via the CCRB's website.

On July 2, 2022, at approximately 11:25pm, in the vicinity of East Gun Hill Road and Barnes Avenue, in The Bronx, PO Charles Hillery and PO Justin Calderon, of the 47th Precinct, interfered with § 87(2)(b) use of a recording device (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). PO Hillery then flashed his light in § 87(2)(b) face and said to him, "You little punk" (**Allegations C and D: Discourtesy**, § 87(2)(g)). PO Calderon pointed his flashlight at § 87(2)(b) face (**Allegation E: Discourtesy**, § 87(2)(g)). PO Hillery and his partner, PO Omar Habib, also of the 47th Precinct, turned off their body-worn cameras (BWCs) before approaching § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g)). (**Allegation G: Abuse of Authority**, § 87(2)(g)). PO Hillery pressed his chest against § 87(2)(b) (**Allegation H: Force**, § 87(2)(g)). He then slapped his phone out of his hand (**Allegation I: Force**, § 87(2)(g)) causing it to fall to the ground and break (**Allegation J: Abuse of Authority**, § 87(2)(g)).

PO Hillery twisted § 87(2)(b) arm (**Allegation K: Force**, § 87(2)(g)). He then said, "Now you're going to jail" (**Allegation L: Abuse of Authority**, § 87(2)(g)). Lt. Amanda Szot, of the 47th Precinct, said to § 87(2)(b) "Stop moving or I will taser you" (**Allegation M: Abuse of Authority**, § 87(2)(g)).

On February 2, 2023, PO Hillery provided a false official statement to the CCRB (**Allegation N: Untruthful Statement**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

This incident concluded with § 87(2)(b) being removed to the stationhouse and released with a C-Summons for harassment (Board Review 01).

The CCRB obtained BWC (Board Review 02, 03) and cellphone footage of this incident (Board Review 04, 05).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Charles Hillery interfered with § 87(2)(b) use of a recording device.

Allegation (B) Abuse of Authority: Police Officer Justin Calderon interfered with § 87(2)(b) use of a recording device.

On July 2, 2022, at approximately 11:25pm, § 87(2)(b) was walking his sister's dog along Barnes Avenue between East Gun Hill Road and Magenta Street in the Bronx (Board Review 06). § 87(2)(b) noticed ongoing police activity and began recording it using his cellphone. § 87(2)(b) stood on the street next to the trunk of a parked white SUV. PO Hillery approached § 87(2)(b) and stood approximately two to three feet away from him, while facing him. They did not interact. § 87(2)(b) continued to record video of the police activity with his flashlight on. § 87(2)(b) believed PO Hillery stood directly in front of him to block him from recording the ongoing incident.

In PO Hillery's second BWC recording, at 00:25, § 87(2)(b) is standing on the street, behind a parked white SUV (Board Review 02, 03). PO Calderon approaches § 87(2)(b) direction and speaks to him. This portion of the footage does not have audio. At 00:35 § 87(2)(b) is standing on

the sidewalk, while continuing to point a cellphone device in the direction of police activity taking place across the street. PO Hillery stands on the street behind the same parked SUV and faces § 87(2)(b). At 01:55, he says to PO Hillery, “Can I help you?” PO Hillery does not respond, and § 87(2)(b) points his phone camera in PO Hillery’s direction. He then briefly puts his phone down and lifts it back up, with the flash on and points it at PO Hillery then across the street. At 03:16, PO Hillery says, “Sir, please get that out of my eye.” At no point in this footage does PO Hillery prevent § 87(2)(b) from recording the incident.

Cellphone camera footage recorded by § 87(2)(b) shows him walking approximately halfway across the two-lane street, in the direction of a parked marked NYPD vehicle, where he remains from 01:02 to 02:00 (Board Review 04, 05). An out of frame male voice says, “Move to the sidewalk, at least. I’m not telling you to stop recording but move to the sidewalk.” Based on the movement of his camera frame, § 87(2)(b) appears to take steps backwards. This video does not show any obstructions of the recording by PO Hillery or any other officers.

PO Hillery testified that he approached § 87(2)(b) because he saw PO Calderon “having issues with him” (Board Review 07). PO Calderon instructed § 87(2)(b) to stop advancing towards the scene and back away, but § 87(2)(b) disobeyed. PO Hillery did not know whether § 87(2)(b) stood on the sidewalk or on the street. PO Hillery denied attempting to prevent or intentionally preventing § 87(2)(b) from recording the ongoing police activity by standing in front of him and his cellphone device.

PO Calderon testified that § 87(2)(b) stood on the street, approximately five to six feet away from the sidewalk (Board Review 08). He told him that he is allowed to continue recording, but to do so from the sidewalk. PO Calderon did this as a precaution for the safety of officers and bystanders because he had not yet learned details of the ongoing incident. § 87(2)(b) ignored PO Calderon, but he eventually stepped back onto the sidewalk.

Patrol Guide Procedure 203-29 states that “individuals have a right to lawfully observe and/or record police activity [which] can be limited for reasons such as the safety of officers or other members of the public.” The procedure dictates that members of service shall not “threaten, intimidate, or otherwise discourage an observer from recording the police officer’s activities; or intentionally block or obstruct cameras or other recording devices when there is no legitimate law enforcement reason to do so” (Board Review 09).

Although PO Hillery stood in front of § 87(2)(b) while he was recording police activity, at no point did he attempt to discourage him from continuing to record. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) own recording of police activity shows him advancing on the street where the police activity took place. PO Calderon articulated to § 87(2)(b) that he could record, and to do so from the sidewalk, for the safety of officers and civilians. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Discourtesy: Police Officer Charles Hillery acted discourteously toward § 87(2)(b)

Allegation (D) Discourtesy: Police Officer Charles Hillery spoke discourteously to § 87(2)(b)

Allegation (E) Discourtesy: Police Officer Justin Calderon acted discourteously toward

§ 87(2)(b)

While § 87(2)(b) was recording the police activity, he saw PO Hillery place his flashlight on his right shoulder and light it. The light flashed into § 87(2)(b) eye. § 87(2)(b) later stopped recording and began walking away. He said to himself, “He was really mad. Thought that he was going to do shit.” PO Hillery walked around the parked SUV and said, “What did you say?” § 87(2)(b) said, “You heard what I said.” PO Hillery replied, “I didn’t hear what you said. So, what did you say?” § 87(2)(b) told PO Hillery that he was going to record him to which he responded, “You little punk.”

In PO Hillery’s second BWC recording, at 04:17, he and PO Habib walk on the left side of the parked SUV towards the intersection at East Gun Hill Road, approximately one car length behind § 87(2)(b) who is walking in the same direction, on the sidewalk and on the right side of the parked SUV. At 04:21, § 87(2)(b) says, “Dude, you’re fucking retarded. Just standing there looking all fucking...” § 87(2)(b) sentence is interrupted by PO Hillery deactivating his camera. This footage captures multiple sources of light, including streetlights and flashing police vehicle lights. At no point during this portion of the footage does PO Hillery say, “You little punk.”

The BWC footage recorded by PO Calderon depicts an alternate angle of the events captured in PO Hillery’s. It does not show whether PO Calderon flashed his light in § 87(2)(b) face (Board Review 2,10).

PO Hillery’s flashlight was on during this incident because the area was dark. After he asked § 87(2)(b) to get the camera flash out of his eye, § 87(2)(b) shouted profanities at PO Hillery, which he did not recall. Although he was holding his flashlight, he was not aware of it being flashed towards § 87(2)(b) face or eyes. PO Hillery also speculated that if his flashlight did point at § 87(2)(b) face, it may have been because he was holding it and was gesturing with his hands as he was speaking. However, he did not know beyond any doubt that this was the case. PO Hillery denied intentionally pointing his flashlight at § 87(2)(b). He denied saying, “You little punk.”

PO Calderon testified (Board Review 08) that while he was trying to get § 87(2)(b) attention to ask him to step back onto the sidewalk, he briefly flashed his flashlight in § 87(2)(b) face. § 87(2)(b) did not react and continued to ignore PO Calderon (Board Review 20).

Patrol Guide Procedure 203-09 dictates that officers are to interact with members of the public in a professional manner (Board Review 09).

Because the footage recorded by PO Hillery depicts multiple sources of flashing light, it is not feasible to unquestionably determine whether PO Hillery’s flashlight was pointed towards § 87(2)(b) face. BWC recorded by PO Hillery does not depict him saying, “You little punk,” to § 87(2)(b). However, due to an approximately 44 seconds long audio gap, the investigation is unable to determine whether PO Hillery spoke discourteously to § 87(2)(b) § 87(2)(g)

Although there is no footage depicting this, PO Calderon testified that he did flash his light at § 87(2)(b) face to get his attention. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Allegation (G) Abuse of Authority: Police Officer Omar Habib improperly used his body-worn camera.

§ 87(2)(g), § 87(4-b)

The same request yielded two separate recordings made by PO Habib. The final frame of the first recording has the real time timestamp 23:32:29. It depicts him walking behind PO Hillery, on the street, next to the driver's side of parked white SUV next to which § 87(2)(b) initially stood. At activation, which is at the video player's 00:59 mark, the first frame of his second recording has real time timestamp 23:34:32, indicating that two minutes and three seconds elapsed between the first and second recordings, during which PO Habib interacted with § 87(2)(b) and participated in his apprehension.

§ 87(2)(g), § 87(4-b)

PO Habib testified that he ended his first recording because he believed his involvement in the initial incident was complete. He delayed reactivating his BWC during § 87(2)(b) apprehension until it became safe for him to do so. He denied intentionally deactivating his BWC.

Patrol Guide procedure 212-123 states that it is mandatory for members of service to activate their BWC prior to engaging in "public interactions that escalate and become adversarial." It further states, "In the event of an unanticipated or exigent occurrence, activate the BWC as soon as it is feasible and safe to do so after taking necessary police action to preserve human health and safety."

§ 87(2)(g), § 87(4-b)

PO Habib testified that he only re-activated his BWC once it was safe to do so, after § 87(2)(b) apprehension was complete. Based on the BWC footage obtained, it is unclear whether PO Habib engaged in an interaction with § 87(2)(b) at the same time as PO Hillery. The footage shows that the

interaction did become adversarial, creating an exigent occurrence in the attempt and subsequent struggle to place § 87(2)(b) in handcuffs. § 87(2)(g)

Allegation (H) Force: Police Officer Charles Hillery used physical force against § 87(2)(b)

Allegation (I) Force: Police Officer Charles Hillery used physical force against § 87(2)(b)

Allegation (J) Abuse of Authority: Police Officer Charles Hillery damaged § 87(2)(b) property.

As § 87(2)(b) was walking away from where he stood near the white parked SUV, PO Hillery approached him and “chest bumped” him, once or twice, by pressing his own chest against § 87(2)(b). § 87(2)(b) said, “Alright, if you feel like doing something then do something.” PO Hillery made a fist and punched § 87(2)(b) phone out of his right hand, causing it to fall to the ground. § 87(2)(b) picked up his phone and said, “Ok so this is what we are doing? You broke my phone O.K. Cool. OK You’re going to pay for it.”

In PO Hillery’s third BWC recording (Board Review 19), where audio begins at 00:41, at 00:07, PO Hillery approaches § 87(2)(b) and appears to make physical contact with his chest, as § 87(2)(b) chest and shoulder area briefly cover the camera lens rendering the image entirely black. At this time, both PO Hillery and § 87(2)(b) are walking in each other’s directions. It is unclear in this footage whether the contact made between PO Hillery’s BWC and § 87(2)(b) chest is a result of either of them “chest bumping” the other. PO Hillery’s hands and body are not visible at this time. At 0:10, § 87(2)(b) holds up a cellphone and points it near PO Hillery. A flash appears from the phone’s camera.

A frame-by-frame review of PO Hillery’s third BWC Recording (Board Review 19), from 00:12 to 00:15 depicts PO Hillery using his right hand, with an open palm, to hit § 87(2)(b) phone out of his hand (Board Review 11). At 00:15, through a frame-by-frame review, § 87(2)(b) cellphone can be seen hitting the ground. PO Hillery turns around and begins to walk away from § 87(2)(b). At 01:20 § 87(2)(b) says to Lt. Szot, “I am recording, and he fucking slapped my phone out of my hand. He broke my fucking phone.”

Screen captures of the same video (Board Review 19), from 00:12 to 00:15, depict PO Hillery hitting § 87(2)(b) hand, and § 87(2)(b) phone falling and bouncing on the ground (Board Review 12).

A photograph provided by § 87(2)(b) shows a crack on the cellphone’s back camera (Board Review 13).

PO Hillery testified that while he was leaving the incident location, § 87(2)(b) followed him for approximately half a block, and said something along the lines of “I will fuck you up. I’ll kill you slow.” PO Hillery decided to arrest § 87(2)(b) and stopped walking, while § 87(2)(b) continued to walk, bumping into him, and nearly causing him to fall to the ground. When shown the portion of his third BWC recording referenced above, PO Hillery declined making any changes to his statement. PO Hillery denied pressing his chest to § 87(2)(b) causing a “chest bump.” He added that he may have been shielding his eyes at this time. He denied slapping or punching § 87(2)(b) phone out of his hand and denied intentionally damaging § 87(2)(b) phone.

PO Habib did not see PO Hillery press his chest against § 87(2)(b). He added that he saw § 87(2)(b) phone fall to the ground when PO Hillery reached for his wrist to arrest him.

Patrol Guide Procedure 221-01 states that, “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy (Board Review 09).

§ 87(2)(g)

PO Hillery’s third BWC recording, when reviewed frame by frame from 00:12 to 00:15, depicts him using an open palm to hit § 87(2)(b) hand, where his phone is held, causing the phone to immediately fall to the ground. This version of events is akin to § 87(2)(b) testimony. Within sixty seconds of this part of the incident, § 87(2)(b) informs Lt. Szot that PO Hillery slapped his phone out of his hands causing the phone to break. This statement is also consistent with the events captured in PO Hillery’s BWC, and the photograph provided by § 87(2)(b) § 87(2)(g)

Allegation (K) Force: Police Officer Charles Hillery used physical force against § 87(2)(b)

Allegation (L) Abuse of Authority: Police Officer Charles Hillery threatened to arrest § 87(2)(b)

Allegation (M) Abuse of Authority: Lieutenant Amanda Szot threatened § 87(2)(b) with the use of force.

After he hit § 87(2)(b) phone to the ground, PO Hillery began to walk away from him. He then walked back to him, grabbed his left arm, twisted it, and said, “Now you’re going to jail.” § 87(2)(b) felt his arm twist a second time. He testified that these events happened fast, and he was unable to determine which officers took which actions while apprehending him. While officers were attempting to handcuff him, Lt. Szot approached § 87(2)(b) and said, “Stop resisting arrest or I’m going to tase you. Stop.”

BWC footage recorded by PO Hillery shows him walking away from § 87(2)(b) towards East Gun Hill Road at 00:15. At 00:26, PO Hillery walks back in § 87(2)(b) direction where they meet at the intersection of Barnes Avenue and East Gun Hill Road a few feet away from the sidewalk. At 00:34 PO Habib is seen holding § 87(2)(b) by his right elbow. It also briefly shows PO Hillery holding § 87(2)(b) left wrist. A struggle between § 87(2)(b) and PO Hillery, PO Habib, and other officers ensues. This renders officers’ actions indiscernible for the following thirty seconds. This footage does not show PO Hillery telling § 87(2)(b) “Now you’re going to jail.”

In BWC footage recorded by Lt. Szot, at 01:36 Lt. Szot approaches § 87(2)(b) and says, “Alright, relax, relax.” She points her CEW towards him, as he is pulling his right arm away from PO Habib. She says, “Stop. I’m gonna taser you. I’m going to taser you. Stop.” She adds while continuing to point her CEW in his direction, “Don’t move. Don’t move. Put your hands behind your back, or I will taser you.” (Board Review 2, 10)

PO Hillery testified that he decided to arrest § 87(2)(b) after he threatened him. He reached for his arms to place them behind his back. § 87(2)(b) resisted by tensing up and flailing and moving his arms. PO Hillery testified that it is “almost inevitable” that § 87(2)(b) arm was twisted while he and other officers attempted to handcuff him, because § 87(2)(b) was resisting. He denied intentionally twisting his arm. PO Hillery told § 87(2)(b) that he was under arrest but did not recall

specifically saying, “Now you’re going to jail.” Lt. Szot told § 87(2)(b) that she would tase him if he did not stop resisting.

Lt. Szot testified that she saw § 87(2)(b) actively resisting arrest by refusing to place his hands behind his back and pulling his arms away from officers (Board Review 14). She described him as an approximately six-foot tall individual with a stocky build. To gain compliance from § 87(2)(b) she unholstered her Taser, pointed it at his chest, and told him to stop resisting or she would tase him. This action was effective in gaining compliance from § 87(2)(b) as PO Hillery, PO Habib, and other officers whose identities she did not recall, handcuffed him without further incident.

PO Habib testified that § 87(2)(b) was arrested because he “made terroristic threats” to PO Hillery (Board Review 15). He resisted arrest by moving his arms. § 87(2)(b) was “wet and slippery, as if he had been in a pool.” He added that there is a possibility that § 87(2)(b) arms were twisted during his apprehension because his body was slippery, he was contorting his body and flailing his arms, and officers were attempting to place his hands behind his back.

Patrol Guide Procedure 221-01 states that, “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy (Board Review 09).

Patrol Guide Procedure 221-08 defines active resistance as “physically evasive movements to defeat a member of the service’s attempt at control,” adding that “CEWs should only be used against persons who are actively resisting, exhibiting active aggression or to prevent individuals from physically injuring themselves or other person(s).” (Board Review 09)

Lt. Szot’s BWC footage shows § 87(2)(b) pulling his arm away from PO Habib. Further, PO Hillery, PO Habib, and Lt. Szot all testified that § 87(2)(b) resisted arrest by either flailing or moving his arms away from officers. Additionally, though neither of them confirmed this happening, both PO Hillery and PO Habib surmised that § 87(2)(b) arm may have been twisted during the struggle to place him in handcuffs. PO Hillery denied intentionally doing so. The video evidence shows that § 87(2)(b) actively resisted while being placed in handcuffs. § 87(2)(g)

§ 87(2)(g)

The BWC footage and testimonies cited above show that § 87(2)(b) actively resisted arrest. The above cited procedure allows for the use of a CEW to gain compliance in such a circumstance. § 87(2)(g)

Allegation (N) Untruthful Statement: Police Officer Charles Hillery provided a false official statement to the CCRB.

Footage recorded by PO Hillery's BWC, prior to its activation, depicts him hitting § 87(2)(b) phone with his hand, causing it to fall to the ground and break (Board review 19).

On February 2, 2023, while being interviewed at CCRB regarding this complaint, PO Hillery was presented with the above-summarized BWC footage. Regarding the frame that shows his hand hitting § 87(2)(b) hand and phone, he stated that he was unsure whether that constituted contact. He added that that frame could represent a lot of possibilities because at this time of the incident, he was shielding his eyes. PO Hillery did not know what actions he took to remove § 87(2)(b) light from shining in his eyes. He fully denied taking the actions depicted in the BWC footage (Board Review 21). He did not want to make any amendments to his statement following the review of this video. He was provided with the opportunity to review this footage additional times, which he declined.

Patrol Guide Procedure 304-10 prohibits member of service from "intentionally making a false official statement," which it defines as "an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation."

PO Hillery's statement was inconsistent with the events depicted in the buffer portion of his BWC footage. He was provided ample opportunity to alter his statement after he was confronted with the evidence. PO Hillery continued to deny that the events depicted took place. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 16).
- Lt. Amanda Szot has been a member of service for fifteen years and has been a subject in four CCRB complaints and ten allegations, of which two were substantiated.:

